New York and Massachusetts courts simply extended to voidable preferences the test previously defined by the Supreme Court in respect to acts of bankruptcy[15]—that the act or attitude at which the statute was aimed was that which first gave notice to the general creditor that a specific creditor was attempting to place his claim in a preferred position.[16] Since such an interpretation conduces much more to an equal distribution of the bankrupt's assets, the New York and Massachusetts doctrine would seem preferable.

INVALID GIFTS AND PAROL TRUSTS.—Prior to the Statute of Uses a settlor could create an enforceable Use in a volunteer provided title was conveyed to a third person. And a Use *in esse* could be gratuitously granted. In the absence of transmutation of possession, however, the designated beneficiary could gain recognition in Equity only upon showing a consideration of blood or money. This distinction was subsequently disregarded in the law of Trusts by a decision[1] to the effect that the owner of property could constitute himself a trustee for another by manifesting a clear intent to hold a specific *res* in trust. Nor was a consideration required. This result was anomalous. However, it was at once seized upon as a means of perfecting in Equity a gift invalid at law.[2] Two cases arise: (1) a gift from A to B, in trust for C; (2) a gift from A to B. Obviously, C's rights in Equity in the first case depend upon the validity of B's legal title. It is elementary that lack of delivery, or disability in the donee, as in the case of a wife upon a donation from her husband, invalidates a gift at law. Accordingly, the question of B's title is easy of determination if chattels are involved, but as to choses in action the question is more difficult since no title passes by the assignment. However, the donee and the *cestui* are protected if the donor has left undone no act that Equity cannot compel.[3] Thus an assignment of a chose in action coupled with a power of attorney, express or implied, sufficiently vests title in the donee.[4] As the donor's death revokes his power of attorney unless it be coupled with an interest, the right of the donee, or the *cestui*, subsequent to the donor's death is not free from doubt.

Although few courts have refused to consider such a gift valid if made *causa mortis*,[5] greater reluctance is felt concerning gifts *inter vivos*.[6] It has been urged that title to the paper evidencing the chose in action is a sufficient interest to render irrevocable the accompanying express or implied power of attorney.[6] Some jurisdictions, moreover, regard this

---

[15]Wilson *v.* Nelson (1901) 183 U. S. 191.

[16]Cf. Security Warehousing Co. *v.* Hand (1906) 206 U. S. 415, 422.

[1]*Ex Parte* Pye (1811) 12 Ves. 140; Gerrish *et al. v.* New Bedford Institute (1879) 128 Mass. 159; Westlake *et al. v.* Wheat (N. Y. 1887) 43 Hun 77.

[2]Morgan *v.* Malleson (1870) L. R. 10 Eq. 475; Richardson *v.* Richardson (1867) L. R. 3 Eq. 686.

[3]Colman *v.* Sarrel (1789) 1 Ves. Jr. 50; Stone *v.* Hackett (Mass. 1858) 12 Gray 227; Otis *v.* Beckwith (1868) 49 Ill. 121.

[4]Fortescue *v.* Barnett (1834) 3 Myl. & K. 36; Hackney *v.* Vrooman (N. Y. 1862) 62 Barb. 650; Wing *v.* Merchant (1869) 57 Me. 383; Syle *v.* Burke (1879) 40 Mich. 499.

[5]1 COLUMBIA LAW REVIEW 488.

[6]1 Harv. L. Rev. 41.

evidence as the debt itself.[7] Either theory seems sufficient to uphold a desirable result. The theory that the gift from A to B, whether for the benefit of the donee or another, if invalid at law, could be upheld on the ground that the donor had constituted himself a trustee, at one time accepted,[8] was short lived. It was declared that an intention to part with the legal title negatived the requisite intention to hold in trust.[8] It has been argued, however, that Equity thereby apparently violated two of its fundamental rules: that substance and not form shall be regarded; that what cannot be done directly will not be done indirectly.[9] To this, however, it is answered that because of its peculiar historical position Equity abdicates in favor of Law when a transfer of the legal title is involved, but assumes jurisdiction when the proposed gift is of the beneficial interest only. On the one hand, the legal sufficiency of the donor's acts is the important fact, on the other, the conscionableness of his refusal to effectuate his original intent.[9] Gifts from husband to wife, where the wife's common law disability still obtained, were sought to be upheld upon the theory that, upon delivery, title vested in the wife, but at once revested in the husband, by operation of law, impressed with the trust, however.[10] This was clearly so in the case of a gift to the wife, from a stranger. The argument, though plausible when personalty was involved, apparently failed as to realty since the divestment of an estate of freehold could only be accomplished by an act or instrument of equal solemnity with that vesting the estate.[11] It would seem that the attempted gift to the wife divested the husband of no title and that to regard him as having thereby become a self declared trustee was a manifest perversion of his intention.

In a recent Pennsylvania case, *In re Ashman's Estate* (Pa. 1909) 72 Atl. 899, the Court refused to regard a father as a trustee of bonds, for his son, upon a failure of a gift of them to the son, because of non-delivery. This reiteration of the narrow doctrine, moreover, accords with sound policy, a consideration in this class of cases.

WAIVER AND LICENSE IN CONDITIONAL ESTATES.—The rule of Dumpor's Case,[1] that a license for a breach of a condition subsequent in a lease for years completely discharges the condition, though vigorously criticised, is generally recognized as the doctrine of the common law.[2] Because of its apparent harshness, however, the courts have not hesitated to engraft exceptions to the rule.[3] Thus, it is held not to apply to a condition capable of being broken a number of times—the so-called "continuous

[7]Slade *v.* Mutrie (1892) 156 Mass. 19; Grover *v.* Grover (Mass. 1835) 24 Pick. 261.

[8]Richards *v.* Delbridge (1874) L. R. 18 Eq. 11; Milroy *v.* Lord (1862) 4 De G. F. & J. 264; *In Re* Smith's Estate (1891) 144 Pa. 428; Baltimore etc. Co. *v.* Mali (1885) 65 Md. 93.

[9]29 Amer. L. Rev. 361.

[10]Grant *v.* Grant (1865) 34 Beav. 623; Baddeley *v.* Baddeley (1878) L. R. 9 Ch. Div. 113; Templeton Adm'r. *v.* Brown *et al.* (Tenn. 1887) 5 S. W. 441.

[11]Price *v.* Price (1851) 14 Beav. 598.

[1](1603) 4 Co. 119b.

[2]Brummel *v.* Macpherson (1807) 14 Ves. 173 (Equity adopted rule of law); Macher *v.* Foundling Hospital (1813) 1 Ves. & B. 188. See also 7 Am. Law Rev. 616-640.

[3]The rule has been repudiated in Illinois: Kew *v.* Trainor (1894) 150 Ill. 150.